



2026:DHC:4146-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 27.04.2026

Judgment pronounced on: 12.05.2026

Judgment uploaded on: 12.05.2026

+ W.P.(C) 18715/2025 & CM APPL. 77838/2025
M/S RAIL AUTOCOM TECHNOLOGIES PRIVATE
LIMITEDPetitioner

Through: Ms. Aparna Jain, Adv.

versus

UNION OF INDIA, MINISTRY OF
RAILWAYS & ANR.

.....Respondents

Through: Mr. Rohan Jaitley, CGSC &
Mr. Dev Pratap Shahi (GP)
with Mr. Akshay Sharma, Mr.
Varun Pratap Singh & Mr.
Yogya Bhatia, Advs.
Mr. Aman Sharma, Mr. Subhan
Shankar Gogoi, Mr. Akshat
Rathore & Ms. Nidhi Jain,
Advocates for R2

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T

ANIL KSHETARPAL, J.:

1. The present Petition assails the action of the Respondent No.1 in awarding the bulk quantity under Tender No. 20259002 dated 19.08.2025 ['Impugned Tender'] for supply, installation and commissioning of Fog Pilot Assistance Systems ['FOGPASS'], to Respondent no. 2 (L1 bidder), to the exclusion of the Petitioner, who

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claims to have emerged as the L2 bidder. The Petitioner seeks quashing of the Impugned Tender, or in the alternative, a direction for re-tendering or allocation of a portion of the tender quantity in its favour.

2. The issue which arises for consideration in the present Petition is whether a bidder, who claims to be the second lowest (L2) (L8 as claimed by the official Respondent) in a public procurement process, and whose quoted price is within a marginal difference of less than 3% from that of the lowest bidder (L1), acquires an enforceable right to claim allocation of a portion of the tendered quantity on the basis of a pre-declared “splitting clause” contained in the tender document; and whether the decision of the procuring authority to award a predominant portion of the contract to the L1 bidder, without extending any share to such bidder, is arbitrary or violative of Article 14 of the Constitution of India, so as to warrant interference under Article 226 of the Constitution.

FACTUAL MATRIX:

3. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

4. The Petitioner, a company recognized as a Startup by the Department for Promotion of Industry and Internal Trade [‘DPIIT’], as well as a Micro, Small and Medium Enterprise [‘MSME’], is engaged in the business of manufacturing and supplying signalling and telecommunication equipment to the Indian Railways.



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5. Respondent No.1, through its nodal agency, Patiala Locomotive Works, issued the Impugned Tender inviting bids for a running contract for supply, installation and commissioning of FOGPASS, along with Annual Maintenance Contract (AMC), for a total quantity of 15,184 units, to be supplied within a stipulated period of 12 months from the date of issuance of the contract.

6. The Petitioner participated in the aforesaid tender process. Upon evaluation of the bids, the Petitioner claims to have been declared as the second lowest (L2) bidder, its quoted price being higher by approximately 2.08% than that of Respondent No.2, which emerged as the lowest (L1) bidder.

7. The Petitioner's grievance centres on Clause 2.3.1 of the Impugned Tender, which provides for splitting of the tendered quantity amongst eligible bidders depending upon price differential and other factors, and contemplates a 60:40 distribution between L1 and L2 where the price difference is within 3%.

8. The tender was finalized and the bulk quantity was awarded to Respondent No.2. No portion of the tendered quantity was allocated to the Petitioner.

9. The Petitioner submitted representations to the Respondents challenging the allocation; however, no relief was granted. It is not in dispute that, pursuant to the award, purchase orders have been issued and execution of the contract has commenced.



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CONTENTIONS OF THE PARTIES:

10. Learned counsel for the Petitioner contended that the Petitioner, being the L2 bidder with a price difference of approximately 2.08% from the L1 bidder, was entitled to allocation of 40% of the tendered quantity in terms of Clause 2.3.1. It was submitted that the Respondents have acted arbitrarily in awarding the entire bulk quantity to Respondent No.2 without adhering to the said clause. It was further contended that the Petitioner was eligible and technically capable of executing the contract and ought to have been considered for allocation. The failure to permit the Petitioner to match the L1 price is also assailed. Reliance was placed on MSME/start-up procurement policies to contend that the Petitioner was entitled to fair consideration. The award of the contract to Respondent No.2 is also questioned on the ground of alleged deficiencies in its past performance.

11. *Per contra*, learned counsel for the Respondents submitted that the Petition is not maintainable for want of territorial jurisdiction and is, in any event, infructuous as the tender process stands concluded and execution has commenced. It was further contended that necessary parties have not been impleaded.

12. On merits, it was submitted that the Petitioner was not the L2 bidder but was ranked significantly lower. The tender distinguishes between approved and developmental vendors, and the Petitioner, being a developmental vendor, is not comparable to Respondent No.2. Even within that category, its quoted rates were substantially higher



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than those of other bidders, and therefore it had no entitlement under Clause 2.3.1. The said clause does not confer any enforceable right and is subject to various factors including past performance and capacity. It was contended that the Petitioner's past performance was not satisfactory and that the procurement relates to a critical safety item, justifying award to an approved vendor. Interference at this stage would disrupt a concluded contract and adversely affect public interest.

ANALYSIS & FINDINGS :

13. This Court has considered the submissions advanced on behalf of the parties and perused the material on record.

Re: Issue (i) Maintainability

14. The first issue concerns maintainability, including territorial jurisdiction and alleged infructuousness.

15. The Respondents object to territorial jurisdiction on the basis of Clause 2.16 of the Integrated Bid Document, which stipulates that courts at the place from where the acceptance of tender is issued shall have jurisdiction. The Letter of Acceptance dated 31.10.2025 and the consequent contracts were issued and executed at Patiala.

16. It is settled that jurisdiction cannot be conferred by agreement; however, where the cause of action substantially arises at a particular place, such clause assumes relevance. In the present case, the tender process was undertaken and concluded at Patiala.



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17. In these circumstances, a serious objection as to territorial jurisdiction arises. However, in view of the conclusion on merits, this Court does not consider it necessary to render a final finding on this issue.

18. As regards infructuousness, the tender stands concluded and execution has commenced. Courts ordinarily refrain from interfering in concluded contracts. This aspect, however, is considered along with the merits.

Re: Issue (ii) L2 Status

19. The Petitioner's case rests on the assertion that it was the L2 bidder with a price difference of approximately 2.08% from L1.

20. The record, however, does not support this assertion. The tender distinguishes between approved and developmental vendors, which are not comparable categories. It is not disputed that Respondent No.2 is an approved vendor, whereas the Petitioner was a developmental vendor at the relevant time.

21. Further, within the category of developmental vendors, the Petitioner was not the second lowest bidder and was ranked significantly lower, with higher quoted rates than other bidders, including M/s Beacon Industries.

22. The premise that the Petitioner was L2 is therefore factually incorrect. The invocation of Clause 2.3.1 on this basis is misconceived.



Re: Issue (iii) Enforceable Right

23. Even otherwise, Clause 2.3.1 does not confer any enforceable right to claim allocation of a fixed proportion of the tendered quantity.

The relevant clause reads as under:

“2.3 Splitting of tendered quantity:

2.3.1 Tenders with Pre-decided splitting clause specifically mentioned in SOR (Schedule of Requirements) of tender.

(a) The Purchaser reserves the right to distribute the procurable quantity on one or more than one of the eligible bidders. Zone of consideration of such eligible bidders will be the right of the Purchaser. The zone of consideration will be a dynamic mix of : Inter se position of firms, Supply performance of the firms, Quantity being procured, Criticality of item, Lead time for supply of the item, Number of established suppliers & their capacity etc.

(b) Whenever such splitting of the procurable quantity is made, the quantity distribution will depend (in an inverse manner) upon the differential of rates quoted by the bidders (other aspects i.e. Adequate capacity-cum-capability, Satisfactory past performance of the bidders, Outstanding order load for the Railway making the procurement, Quoted delivery schedule vis-à-vis the delivery schedule incorporated in the tender enquiry etc. being same/similar) in the manner detailed in the table below:

<i>Price differential between L-1 and L-2</i>	<i>Quantity distribution ratio between L-1 and L-2</i>
<i>Upto 3%</i>	<i>60:40</i>
<i>More than 3 % and upto 5 %</i>	<i>65:35</i>
<i>More than 5%</i>	<i>At least 65% on the L-1 bidder</i>

It should be noted that L-1 will be the bidder who is technically suitable for bulk quantity regular order.

(c) In the phrase ‘differential of rates quoted by the bidders’, the quoted rate would mean:

- i. When no price negotiation has been called for, the original rates as obtained at the time of tender opening. However, the rate of the highest eligible bidder within the zone of consideration has to be per-se reasonable.*



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ii. *When price negotiation has been called for, the reference L-1 rate for assessment of ratio will be the original rate of L-1 bidder (suitable for bulk quantity) as obtained at the time of tender opening.*

(d) If splitting of quantity is required to be done by ordering on bidders higher than the L- 2 bidder, then the quantity distribution proportion amongst the bidders will be decided by transparent/logical/equity based extrapolation of the model as indicated in the subclause 2.3.1(b)above.

(e) In the cases of inadequate capacity-cum-capability, dissatisfactory past performance, large quantity of outstanding orders (liquidation of which will take very long time) etc., the purchaser shall have the right to distribute the procurable quantity amongst bidders with due consideration to these constraints and in such a manner that would ensure timely supply of material in requisite quantity to meet the needs of operation, maintenance, safety etc. of the Railways, regardless of inter-se ranking of the bidders and in a fair & transparent manner with due conformity to the principles of Natural Justice and Equity.

(f) For cases where the Railways./Production units had entered into TOT/JV (Transfer of technology/Joint Venture) agreements, the following clause will be applicable:

“As PLW has entered into TOT/JV agreement with No. of firms, they reserve the right to place orders on all such TOT/JV agreements partners. However, for ratio/proportion of quantity distribution among such agreement partners, conditions as detailed in sub-clauses 2.3.1: (b), (c) and (d) above: shall apply with the exception that the aspect of per-se reasonability will not be applicable.”

(g) Notwithstanding the above, there can be exceptional situations where Purchaser may come to a conclusion that splitting is neither possible nor feasible and/or not desirable in the administrative interest. In such exceptional situations, Purchaser reserves the right not to split the quantity despite pre-decided splitting clause in the tender condition.

24. A plain reading of the clause shows that splitting of quantity is not mandatory and is subject to multiple factors, including capacity, past performance and delivery capability. The indicated 60:40 ratio is only illustrative and conditional.

25. The clause also presupposes comparison between similarly

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situated bidders. The Petitioner and Respondent No.2, belonging to different vendor categories, are not comparable. No enforceable right, therefore, accrues to the Petitioner.

Re: Issue (iv) Judicial Review

26. The scope of judicial review in contractual matters is limited to examining arbitrariness, mala fides or perversity in the decision-making process. The Court does not sit in appeal over commercial decisions.

27. In the present case, no such infirmity is demonstrated. The decision reflects consideration of relevant factors, including vendor categorization, past performance and price.

28. The contention regarding a right to match the L1 price is without basis. Similarly, reliance on MSME/start-up policies is misplaced, as such policies operate subject to the terms of the tender.

Re: Delay and Public Interest

29. It is significant to note that the tender process has already been concluded, contracts have been signed, and supplies have commenced, resulting in third-party rights.

30. Interference at this stage would unsettle a concluded contract and adversely affect public interest, particularly as the procurement concerns safety equipment.



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CONCLUSION:

31. In view of the above, this Court is of the considered opinion that the present Petition is devoid of merit.

32. Accordingly, the present Petition is dismissed. The pending application also stands closed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

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